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In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK, *Petitioner*

vs.

UNITED STATES OF AMERICA

APPENDIX to PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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FRAYN PRINTING COMPANY

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Excerpts from Senate Committee Hearings commence on Page 4A.

Opinion of Court of Appeals follows Page 37A.

APPENDIX "A"

A chronological summary of the significant events relating to the issues raised by this petition is as follows:

February 16, 1957

Senate Committee[1] directed a "request" to Petitioner to attend Committee hearings, to be subsequently scheduled, to explain "misuse of union funds." Hearings, p. 1509-1510.

February 26, 1957

Senate Committee commenced to hold public hearings concerning alleged activities by officials of the International Brotherhood of Teamsters and affiliated organizations. R. 19. The radio and television reports and comments upon the hearings cannot be reproduced but can fairly be described as "saturation coverage," particularly in the Seattle-Tacoma area. The headlines appearing in newspaper and magazine reports and comments are contained in several thousand pages of exhibits which were filed in the District Court. The following reproductions are illustrative of the type of reports and comments which were circulated in the area in which the grand jury proceedings and trial were conducted, but these reproductions represent a very small fraction of the written material which was distributed throughout the area. Exhibits filed in the District Court contain additional material of this nature.

[1] The term "Senate Committee" as used herein refers to the Select Committee on Improper Activities in the Labor or Management Field. The proceedings of the Committee have been published by the United States Government Printing Office. References herein to "Hearings" relate to the printed proceedings of the Committee.

"ORE. OFFICIAL SAYS TEAMSTERS PLOTTED TO CONTROL HIS STATE"
Seattle Post-Intelligencer, March 2, 1957.

"SENATOR McCLELLAN SEES UNION, VICE TIE-UP"
Seattle Post-Intelligencer, March 3, 1957.

"BAD DAYS FOR DAVE BECK"
Life Magazine, March 11, 1957.

March 12, 1957

Report of special agents of the Internal Revenue Service concerning income tax returns of Petitioner, and returns of certain union organizations was submitted to the Office of the Internal Revenue Service in Washington, D. C. Tr. 981, 989. Newspaper headlines continued:

"BREWSTER SAYS UNION MONEY USED TO PAY JOCKEY'S FARE"

"PROBERS ASK FOR BECK'S PERSONAL FILES"
Seattle Post-Intelligencer, March 16, 1957.

"EISENHOWER OPENS TAX FILES TO PROBERS; BECK, BREWSTER RETURNS TO BE EXAMINED"
Seattle Times, March 18, 1957.

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[2] Petitioner had had a long and publicized relationship with the International Brotherhood of Teamsters in the Seattle-Tacoma area, and his name had been continually linked with Frank Brewster, another official of the International Brotherhood of Teamsters. Accordingly, in the Seattle-Tacoma area, references to "The Teamsters" and to "Brewster" were generally associated in the minds of the public with Petitioner. R. 244.

"CALIFORNIA GOV. KNIGHT DENIES TEAMSTER HELP"
Seattle Post-Intelligencer, March 21, 1957.

"BECK REPAID TEAMSTERS $270,000 AFTER TAX INVESTIGATION BEGAN, PROBER TESTIFIES"
Seattle Times, March 22, 1957.

"NO RECORDS FOUND OF ANY LOANS TO UNION BOSS, SENATOR'S AIDE TESTIFIES"
Seattle Times, March 22, 1957.

"$709,420 UNION FUNDS HELD MISUSED"
Seattle Post-Intelligencer, March 23, 1957.

March 25, 1957

Petitioner wrote a letter to the Chairman of the Senate Committee, reading in part as follows (Hearings, p. 1512; R. 169):

> "In view of nationwide newspaper, radio and television accounts of the proceedings before this committee and the testimony in connection therewith, and further in view of proposed criminal actions against me of which I have been advised are arising out of alleged violations and further in view of other asserted or implied violations of Federal and State laws, I intend to assert all privileges as to anything I might say, and I have a determination not to waive or imply the Bill of Rights as to any question which may be propounded to me or to the production of my records. Respectfully submitted."

March 26 *and* 27, 1957

Petitioner was directed by subpoena to testify as a witness before Senate Committee. Hearings, p.

1515. At the outset of his testimony, Petitioner read to the entire Committee his letter of March 25, 1957 in which he referred to widespread newspaper, radio and television accounts of the proceedings and stated that he intended to assert his privilege against self-incrimination because of proposed criminal proceedings against him. Hearings, p. 1512. The Committee, nevertheless, proceeded to propound innumerable questions to Petitioner, practically all of which contained implications that he was guilty of theft and other forms of misconduct. The Committee also challenged his right to assert the privilege against self-incrimination and severely criticized him for doing so; and certain members of the Committee expressly stated that his assertion of this privilege amounted to an admission of guilt. Despite the fact that it became clear to the Committee that Petitioner, upon the advice of his attorney and because of proposed criminal proceedings, would refuse to respond to questions, the Committee continued such interrogation and comments for two full days, and the Chairman of the Committee expressly stated that the purpose of such proceedings was to demonstrate to the public at large the offensive nature of Petitioner's conduct.

The proceedings which occurred during Petitioner's appearance before the Committee were broadcast and telecast "live" and by film throughout the Seattle-Tacoma area, and portions of the proceedings were repeated during evening broadcasts and telecasts. R. 42, 48-78. Significant excerpts from the proceedings of March 25 and 26 are as follows:

Hearings, p. 1509

(Senator McClellan)

"In the course of an investigation regarding

operations of labor unions and their relationship with governmental agencies, conducted by the Senate Government Operations Permanent Subcommittee on Investigations during the latter part of last year and the early part of January of this year and prior to the establishment of this select committee, information was discovered clearly indicating the misuse of union funds by Mr. Beck, International President of the Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. . . ."

Hearings, p. 1510

(Senator McClellan)

"This hearing today was scheduled primarily to allow Mr. Beck to turn over to the committee certain of his personal financial books and records. I think it fair and proper to say that during the past 10 days, evidence was developed before this committee supplemented by additional information that the committee has, that clearly indicates that from the years 1949 through the first 3 months of 1953, Mr. Beck took more than $320,000 from the teamsters union treasury in Seattle. From the information now before this committee that money so taken by Mr. Beck was neither a gift nor a loan to him from the union. . . ."

Hearings, p. 1514

(Senator Ives)

"There is no question in my mind but what the Senate intended us to have this power in setting up this committee. If the Senate has the power the committee has the power, so you are challenging the Senate itself, and you are challenging the Congress itself in the challenge you make. *You are challenging, moreover, the whole Government of the United States.* . . ."
(Emphasis supplied)

Hearings, p. 1519-1520

(Chairman, et al.)

The CHAIRMAN. "Do you know that the position that this right of using the fifth amendment so as to preclude your having to disclose knowledge and information you have about transactions you have had with your union in which evidence has been developed that you have misappropriated and misused funds of that union—do you regard your privileges under the fifth amendment as transending your duty and obligations to the laboringmen (sic) of this country who belong to your union?

Mr. BECK. "I would like to—

(The witness consulted with his counsel.)

Mr. BECK. "I would like to say, at this time in answer to your question—

(The witness consulted with his counsel.)

Mr. BECK. "That—

(The witness consulted with his counsel.)

Mr. BECK. "I would like to answer the question this way: That there are legal rights involved in answering this question and that I very definitely am answering, and in taking advantage of any of the amendments, I am doing so upon the 100 percent unanimous advice of my chief counsel, Senator Duff, and associate counsel identified with him.

The CHAIRMAN. "Well, the Chair certainly would not reflect upon your counsel. We regard them as very able and competent, no doubt.

Mr. BECK. "We agree on one place.

The CHAIRMAN. "No doubt they feel that it would be best for you to take the fifth amendment, if they have so advised.

Mr. BECK. "I am carrying out the advice of Senator Duff, my counsel.

The CHAIRMAN. "But what I want to find out, and I think there are about 1,300,000 or 1,500,000 teamster union members in this coun-

try who would like to know whether you regard the fifth amendment as a protection device to yourself and transcending the duty and obligation that you owe to them and the responsibility that they have honored you with in the highest position of trust you now hold in their union.

Mr. CONDON. "Mr. Chairman, I feel that Mr. Beck has expressed his views on the subject that you have dealt with and I submit that your question is entirely irrelevant to the proceedings.

The CHAIRMAN. "Well, I do not think many people in America will agree with that conclusion. I think that we are entitled to know in this inquiry. When one invokes the fifth amendment, it has always been my position that it is a privilege. But he has no duty to invoke it.

"Some people are in positions of trust and honor and obligation where, in my judgment, the duty and obligation they owe to those who have placed them in that position of trust, certainly transcends the right of invoking the fifth amendment.

"I just want to get his views about it. I want to give him this opportunity to tell his union members and tell the country, the people who are interested in this proceeding, and its objectives, whether he so regards it."

Hearings, p. 1522

(Senator Ervin)

"Mr. Beck, do you not believe that the members of the teamsters are entitled to have as a president, a man who will conduct his affairs as president of such union in such a manner that when he is called upon to account for his handling of union funds, he will not feel compelled either on his own volition or on the ad-

vice of counsel, to hide behind the fifth amendment to keep from giving an accounting?"

Hearings, p. 1523

(Senator Ervin)

"I think that you concur in my inference then, that Senator Duff and your other counsel gave you very wise advice when they told you to invoke the fifth amendment, after they had been informed by you of your transactions of union affairs, is that not so? Do you not think that they gave you wise advice?"

Hearings, p. 1527-28

(Senator McNamara)

" . . . . When you answer these questions or refuse to answer these questions you are not only reflecting on yourself and your organization, but you are also reflecting on approximately 15 million Americans. I think you have a tremendous weight on your shoulders. I want to sympathize with you because of that situation.

"However, this committee is charged by the United States Senate to make a study. Obviously, the ends are twofold: to recommend to the Department of Justice actions where we find illegal acts have been committed; second, and perhaps (sic) the most important duty, is to recommend legislation to correct improper activities in the field of management and labor. . . . "

Hearings, p. 1533

(Mr. Kennedy—Committee Counsel)

"We have information and it has been developed this past week, that Mr. Dave Beck took large sums of money from the teamsters union in Seattle, Wash., and used them for his

own personal benefit. I would like at this time to question Mr. Beck about some of those funds.

The CHAIRMAN. "Counsel may proceed.

Mr. KENNEDY. "During the year 1946, Mr. Dave Beck took $31,000 from the Joint Council Building Association to pay off a loan that he had from a bank.

(The witness conferred with his counsel.)

Mr. KENNEDY. "Mr. Beck, did you do that?

(The witness conferred with his counsel.)

Mr. BECK. "In regards to the allegation, I must decline to answer the question because this committee lacks jurisdiction or authority under articles I, II, and III of the Constitution; further, because my rights and privileges granted by the Constitution as expressed by the fourth and fifth amendments are violated.

The CHAIRMAN. "Do you honestly believe, Mr. Beck, that if you answered that question truthfully, a truthful answer under oath might tend to incriminate you?

Mr. BECK. "It might; and I emphasize 'might.'

The CHAIRMAN. "It really might. . . ."

Hearings, p. 1535

(Mr. Kennedy)

"Mr. Chairman, we have information indicating that from the year 1949 Mr. Dave Beck took from the union funds some $4,812.39 and deposited it in his own bank account.

The CHAIRMAN. "Ask the witness whether he did it.

Mr. KENNEDY. 'Mr. Beck, did you take some $4,812.39 from the Western Conference of Teamsters in the year 1949 and deposit it in your own bank account?

(The witness conferred with his counsel.)

Mr. BECK. "I must decline to answer the question because this committee lacks jurisdic-

tion or authority under articles I, II, and III of the Constitution; further, because my rights and privileges granted by the Constitution as supplemented by the fourth and fifth amendment are violated."

Hearings, p. 1536

(Mr. Kennedy et al.)

Mr. KENNEDY. "Mr. Chairman, we have information that approximately $196,516.49 was taken from union funds in Seattle to pay Mr. John Lindsay for work that was done on Mr. Beck's home and on homes that were on Mr. Beck's property.

The CHAIRMAN. "What is that amount?

Mr. KENNEDY. "$196,516.49 from 1949 through 1953.

"Mr. Chairman, out of that amount, $136,805.65 was taken from Joint Council 28 Building Association; $59,710.84 was taken directly from the Western Conference of Teamsters. Mr. Beck signed all these checks.

The CHAIRMAN. "Mr. Beck, the Chair will ask you whether there was a total of $196,516.49 taken out of union funds to pay for the building of your house and other houses on your property.

(The witness conferred with his counsel.)

Mr. BECK. "I must decline to answer the question, because this committee lacks jurisdiction or authority under articles I, II, and III of the Constitution; further, because under rights and privileges granted by the Constitution as supplemented by the fourth and fifth amendments, I need not answer.

The CHAIRMAN. "You are ordered and directed to answer the question.

Mr. BECK. "My answer is the same as I just read into the record.

The CHAIRMAN. "The order of the Chair will continue.

Mr. KENNEDY. "Mr. Chairman, we have information that from the year 1949 to 1953—

The CHAIRMAN. "Let me ask the witness: Do you want to comment on any of this, this $136,805 and some cents—he got out of what council?

Mr. KENNEDY. "Joint Council 28 Building Association.

The CHAIRMAN. "Would you like to comment on that and clear it up for us?

Mr. BECK. "I have answered the question. I do not desire to change it in the slightest degree.

The CHAIRMAN. "You do not want to comment?

Mr. BECK. "Only as I have answered the question.

The CHAIRMAN. "I see."

Hearings, p. 1537

(Senator McCarthy)

"You know that if you are innocent of any wrongdoing, then you could answer very simply "yes" or "no." It is only if you are guilty of wrongdoing that you might incriminate yourself? You realize that, do you not?"

Hearings, p. 1548

(Senator Mundt)

"As one layman to another, just as in discussing this on television or radio which is comprised primarily of laymen, let me say that I cannot understand why in the world unless there is some reason of guilt on your part you would not answer a simple question about union policy such as I have propounded to you. I was not trying to involve you in any way. I was talking about general officers of the teamsters organization which you head."

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Hearings, p. 1670

(Mr. Kennedy)

Mr. KENNEDY. "Mr. Chairman, we have information that out of the $320,000 that Mr. Beck took from the union, $196,000 of it went to the contractor John Lindsay for working at Mr. Beck's home, including the building of his swimming pool.

"I would like to ask Mr. Beck if that is correct.

Mr. BECK. "I must decline to answer the question because this committee lacks jurisdiction or authority under articles I, II, and III of the Constitution; further I decline to answer because I refuse to give testimony against myself and invoke the fourth and fifth amendments; and further, because the question is not relevant or pertinent to the investigation."

Hearings, p. 1671

(Mr. Kennedy)

Mr. KENNEDY. "Mr. Chairman, on another matter, we have information that Dave Beck purchased 2 lots, 2 properties, that adjoined the Joint Council Building Association in Seattle; that he purchased these lots for $39,000 and then sold them to the teamsters union for $135,000.

The CHAIRMAN. "Let the Chair ask you to clarify it. Was that at a time when he was an official in the union?

Mr. KENNEDY. "That is correct, Mr. Chairman. He purchased the lots for $39,000 and sold them to the teamsters union for $135,000, based on the information that we have.

(The witness conferred with his counsel.)

The CHAIRMAN. "Ask the witness whether he did it.

Mr. KENNEDY. "Mr. Beck, did you do that?

Mr. BECK. "I must decline to answer the question because this committee lacks jurisdiction or authority under articles I, II, and III of the Constitution; further, I decline to answer because I refuse to give testimony against myself and invoke the fourth and fifth amendments; and further, because the question is not relevant or pertinent to the investigation."

Hearings, p. 1677

(Mr. Kennedy)

Mr. KENNEDY. "Mr. Chairman, as I stated, in March 1954 was the interview Mr. Beck had with the Internal Revenue Department. He was then unable to tell exactly how much he had taken from the union. So he sent the $200,000 in in August of 1954 and signed an agreement with the union at that time that the $200,000 would be a down payment on account and that the rest of the money would be repaid at a later day, when they could determine, by tracing Mr. Dave Beck's use of the union funds, how much money he had taken from the union treasury. I want to ask him if that is a correct recitation of the facts.

Mr. BECK. "I must decline to answer the question because this committee lacks jurisdiction or authority—

The CHAIRMAN. "All right. Consider it all read. Insert in into the record at this point."

Hearings, p. 1678

(Senator McClellan)

"The Chair wishes to make this statement. We have a witness here that is refusing to answer, and who is hiding behind the fifth amendment. The only reason I have continued is to let the country know, let the teamsters of this country know, the chara ter of transactions that have transpired, about which this

witness is unwilling to make disclosures under oath. For that reason, I have indulged the interrogation to this point."

At the conclusion of Petitioner's appearance before the Committee, the Chairman of the Committee declared: (*Hearings*, p. 1683-84)

"It had been hoped that when Mr. Beck appeared before this committee he would be a cooperative witness, that he would come in a spirit of trying to assist and aid the committee in performing its functions and rendering the service to the Government that it is his duty to render.

"Unfortunately and unhappily, that has not been the case. It did not materialize in that way. This witness in my opinion has shown utter contempt for this committee, for the Congress of the United States, and for his Government.

"Whether that contempt is actionable or not, I am not at the moment prepared to say, but this committee will give consideration to the question of whether it is actionable.

"If it is found to be, I have no doubt what the judgment and action of the committee will be. Mr. Beck has shown flagrant disregard and disrespect for honest and reputable unionism and for the best interests and welfare of the laboring people of his country.

"Above all, he has shown arrogant contempt for the million and a half members, the honest laboring people in the teamsters union. Since he is so anxious to get into court, it is my sincere hope that in due time the witness will be judged accordingly.

"Now, I regret that proper propriety and common decency dictates that I should not spread here on the record any further substance of my opinion . . ."

The headlines relating to Petitioner's appearance before the Senate Committee were as follows:

"SENATORS CITE BECK OBLIGATION TO PUBLIC TO ANSWER QUESTIONS"
Seattle Times, March 26, 1957.

"UNIONS' $85,819 USED TO PAY BECK BILLS, SAY PROBERS"
Seattle Times, March 26, 1957.

"BECK WON'T BARE RECORDS"
"LABOR BOSS INVOKES 5TH AMENDMENT"
Tacoma News-Tribune, March 26, 1957.

"BECK SOLD HOME TO TEAMSTERS TO PAY UNION LOAN, SAY SOLONS"
"$320,000 TAKEN BY UNION BOSS, PROBERS CHARGE"
Seattle Times, March 27, 1957.

The avid interest of the public in the radio coverage of Petitioner's appearance before the Committee is demonstrated by the following newspaper report:

"BECK INQUIRY JAMS *KING* SWITCHBOARD"

"Many residents of the Northwest, listened Tuesday to radio broadcasts of Teamsters Chief Dave Beck sparring with a Senate committee.

"KING officials said the response to the station's live broadcast of the hearing was 'astounding.' Station KVI also carried portions of the hearing live.

"One KING official said the station's switchboard was swamped with thousands of calls, more than for any other broadcast."

Seattle Post-Intelligencer, March 27, 1957.

The reputed attitude of the President of the United States toward these proceedings was indicated by the following headline:

"BECK'S REFUSAL TO REPLY LOOKS BAD, IKE FEELS"
Tacoma News-Tribune, March 27, 1957.

The newspaper reports continued:

"BECK TAKES 5TH AMENDMENT"
Seattle Times, March 26, 1957.

"BECK WON'T ANSWER QUESTIONS ON FUNDS"
Seattle Post-Intelligencer, March 27, 1957.

Radio KING 1090

"LIVE" TODAY, WED.

7 a.m. to approximately 9:30 a.m.
11 a.m. to approximately 2:15 p.m.
7 p.m. to 10 p.m., taped highlights of today's hearings.

EXCLUSIVE

DAVE

BECK

FILM HIGHLIGHTS OF WEDNESDAY'S HEARINGS
10:30 to 11:00 p.m., Hearing Highlights
11:00 to 11:15 p.m., World Today News with Ted Bryant.
11:15 to 11:45 p.m., Hearing Highlights.

KING-TV CHANNEL 5

Beck Inquiry Jams KING Switchboard

Many residents of the North west, listened Tuesday to radio broadcasts of Teamsters Chief Dave Beck sparring with a Senate committee.

KING officials said the response to the station's live broadcast of the hearing was "astounding." Station KVI also carried portions of the hearing live.

One KING official said the station's switchboard was swamped with thousands of calls, more than for any other broadcast.

KING radio will carry the Wednesday hearing live from 7 to 9:30 a. m. and from 11 a. m. to about 2:15 p. m. KVI will broadcast the session from 1 to 2:30 p. m.

Wednesday Radio

KVI	KIRO		KING	KOMO
E. Hemingway	News	7:00	Senate	Newscast
Breakfast Gang	Cliff & Clark	7:15	" Hearings	" Continued
Back to	News	7:30	" (Live)	" R. Nichols
" the Bible	Cliff & Clark	7:45	" Continued	H. Shuman
Cliff Engle	" Continued	8:00	" Continued	Dial 1000
Wthr. Sports	NW Headline	8:15	" Continued	" M. Ireland
Reporter	Dave Valle	8:30	" Continued	" Hal Moan
Cecil Brown	R. Miller	8:45	" Continued	" Continued
News	W. Warren	9:00	" Continued	" News
Ladies Jrnl.	Bridge Wife	9:15	" Continued	" Continued
Unity Viewpt.	Helen Trent	9:30	Breakfast	" Continued
Hllywd. Mayle	News	9:45	" Continued	K. Wise
Newsp. of Air	Nora Drake	10:00	Eliz. Leonard	Bandstand
Tello Test	MaPerkins	10:15	O. Anderson	" Continued
Morn. Melodies	Dr. Malone	10:30	Girl Marries	" Continued
M. Considine	Our Gal Sun.	10:45	Whisprg. Sts.	" Continued
News	Rizzo Hapes	11:00	Senate	" Continued
Music	Mrs. Burton	11:15	" Continued	" Continued
Queen for	Strike Rich	11:30	" Continued	" Continued
" a Day	Pat Buttram	11:45	" Continued	" Continued
Noon News	Noon News	12:00	" Continued	M. Ireland
Harmony	Solly Garden	12:15	" Continued	Farm News
" Hoedown	Houseparty	12:30	" Continued	Lunch With
" Continued	" Continued	12:45	" Continued	" K. Wise
" Continued	Arthur	1:00	" Continued	Bill Goodwin
" Continued	" Godfrey	1:15	" Continued	" Show
Carnival	" Continued	1:30	" Continued	" Continued
" Continued	" Continued	1:45	" Continued	" Continued
" Continued	" Continued	2:00	" Continued	True Con-
" Continued	" Continued	2:15	Open House	" fessions
" Continued	Housewives	2:30	" French	Wom. in Hs.
" Continued	Road of Life	2:45	" Continued	Dr. Gentry
Popular	Ruth Ashton	3:00	Musiking	Five-Star
" Parade	Percy Faith	3:15	" w/Warren	" Matinee
Behind Story	Song Times	3:30	" Saunders	Hilltop Hse.
Here's Answer	Hwse. Prot.	3:45	" Continued	P. Young
Fulton Lewis	" League	4:00	" Continued	Dial 1000
E. Hemingway	Headin'	4:15	" Continued	" with Bob
Tello Test	" Home Club	4:30	" Continued	" Ackerley
Sam Hayes	" Continued	4:45	" Continued	" Continued
Bob and Ray	Ed. Morrow	5:00	Musiking	Alex Dreier
" Continued	Northwest	5:15	" Continued	News
" Continued	" News	5:30	" Continued	Sprts., Fishg.
N. W. News	Frank Goss	5:45	" Continued	E. Peterson
Dinner Music	Tom Harmon	6:00	Hdline. Nws.	Spotlite Rev.
" Continued	L. Thomas	6:15	Mel Allen	Alex Dreier
Virgil Pinkley	Amos 'n'	6:30	Edw. Morgan	Big Sound
Sam Hayes	" Andy	6:45	News	" Continued
Gabriel Heater	Clifford &	7:00	Senate	Listening
Bill Brundige	" Clark	7:15	" Hearings	Negro Press
Music	Robert Q.	7:30	" Recordings	Acad. Award
" Treasures	" Lewis	7:45	" of the	" Continued
" Continued	Labor	8:00	" Hearings	" Continued
" Continued	" Hearing	8:15	" of the	" Continued
Family	World	8:30	" Day	" Continued
" Theater	" Tonight	8:45	" Continued	" Continued
News Final	Opinion Pls.	9:00	" Continued	" Continued
Fulton Lewis	" Continued	9:15	" Continued	Music
Music by Roth	Back to the	9:30	" Continued	What's New
" Continued	" Bible	9:45	" Continued	" In Books
Chuckwagon	World Final	10:00	" Continued	Reporter
" Jamboree	Brigadier Rm.	10:15	" Continued	Weather
World	Music Hall	10:30	" Continued	Viewpoint
" Tomorrow	" Continued	10:45	" Continued	" Continued
Ranch House	" Continued	11:00	" Continued	News
" Roundup	Dave Page	11:15	" Continued	Album of
Silent	" Continued	11:30	" Continued	" Classics
Silent	" Continued	11:45	" Continued	" Continued
Silent	Silent	12:00	Nite Owl Club	Silent 12:15

"PROBERS LET BECK GO WITH STINGING REBUKE"

UNION CHIEF STAYS SILENT"

Seattle Post-Intelligencer, March 28, 1957.

"THE MYSTERY OF THE MISSING $320,000"

"DAVE BECK TAKES THE 'FIFTH,' BUT THE STORY GOES INTO THE RECORD"

U. S. News & World Report, April 5, 1957.

"TEAMSTER BOARD TO HOLD SECRET STRATEGY MEETING"

Tacoma News-Tribune, April 11, 1957.

"HOW DAVE BECK RATES NOW IN HIS HOME TOWN"

"Take a look around Seattle these days and you find what a Senate inquiry can do to a top labor leader in his own home town . . . "

U. S. News & World Report, April 12, 1957.

April 25, 1957

Prompted by the Senate Committee proceedings, the judges of the Superior Court of King County, Washington directed that a grand jury be convened to investigate Petitioner. In selecting and impanelling the grand jury, the Court declared:

> "We come now to the purpose of this grand jury . . . .
>
> "It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stole hundreds of thousands of dollars of the funds of that union. . . ." R. 23-24.

The press reported the State Grand Jury proceedings as follows:

"JUDGES ORDER COUNTY GRAND JURY!"
"CARROLL TO DIRECT INVESTIGATION OF TEAMSTERS"
Seattle Times, April 25, 1957.

"FUR TO FLY IN SEATTLE'S BECK PROBE"
Tacoma News-Tribune, April 27, 1957.

In addition to the continuing radio and television reports and comments, the newspaper headlines continued:

"McCLELLAN WARNS OF U. S. 'GANGSTER ECONOMY'"
Tacoma News-Tribune, April 26, 1957.

"BECK WITNESSES DISAPPEAR"
"TEAMSTER CHIEFTAIN'S SON AMONG QUARTET SOUGHT; SAY SENATE RACKET PROBERS"
Tacoma News-Tribune, April 28, 1957.

May 2, 1957

The first indictment involved in this case was returned by a grand jury, sitting at Tacoma, Washington. This indictment included a tax evasion count and a 990 count, each relating to the year 1950. R. 3.

The grand jury which returned this indictment, and the subsequent indictment involved in this case, had been given no instructions or directions to avoid exposure to or influence by the publicity generated by the Senate Committee; and no grand

juror had been excused for bias or prejudice resulting from exposure to the Committee proceedings. R. 42-43.

Along with the continuing radio and television publicity, the newspaper reports continued as follows:

"DAVE BECK INDICTED!"
"U. S. GRAND JURY IN TACOMA CHARGES $56,000 EVASION OF INCOME TAXES"
"PROBE CONVENED SECRETLY BY JUDGE BOLDT"
Seattle Times, May 2, 1957.

"BECK'S ARREST DUE TODAY IN U. S. TAX EVASION CASE"
Seattle Post-Intelligencer, May 3, 1957.

"BECK YIELDS, POSTS $5,000 BAIL"
Tacoma News-Tribune, May 3, 1957.

"BUSY WEEK AHEAD FOR BECK MUST FACE AFL-CIO AND SOLONS"
Tacoma News-Tribune, May 5, 1957.

"TEAMSTERS FAILED TO CLEAN UP CORRUPTION, CHARGES AFL-CIO"
Tacoma News-Tribune, May 7, 1957.

"SENATE PROBE LIFTS LID ON BECK BEER BUSINESS"
"USE OF UNION MONEY RELATED"
Seattle Post-Intelligencer, May 9, 1957.

"BECK SHARED $11,000 PROFIT AS TRUSTEE FOR WIDOW OF TEAMSTER, SAYS WITNESS"
Seattle Times, May 11, 1957.

"LABOR"
"AND NOW, TAXES" Showing photograph of Petitioner with caption:

"TEAMSTER BOSS BECK"
"TWO COUNTS AGAINST PUDGY PRIDE"
Time Magazine, May 13, 1957.

"BECK: TROUBLES JUST BEGINNING"
Newsweek, May 13, 1957.

May 15, 1957

On this date Petitioner was again required to appear before the Committee. These proceedings were also the subject of "live" broadcasts and telecasts. R. 110. At the outset of proceedings on this occasion, his attorney, Mr. Edward Bennett Williams, addressed the Committee as follows (Hearings, p. 2038-39):

> "On May 2 of this year, this witness was indicted by a Federal grand jury, sitting in the western district of Washington, for income-tax evasion. That indictment is now pending at this moment, and trial date has not yet been set, but an early trial is expected.
>
> "I have canvassed the situation very carefully in the last few days since Mr. Beck retained me, and I want to call to the attention of the committee that it is my belief and conviction that never before has a witness been called before a congressional committee who has been under indictment and interrogated about matters which can be possibly germane to the indictment.
>
> * * *
>
> "Now, in the light of that fact, Mr. Chairman, I am going to formally request that the

appearance of this witness be deferred until such time as that tax case is adjudicated, because he finds himself at this moment spiked on the horns of a dilemma.

"If he answers questions about financial transactions, he is, in effect giving the Government a pretrial discovery deposition before his trial. He is giving them the benefit of all of the evidence that may be relevant to his defense.

"On the other hand, if he seeks refuge in the fifth amendment, under recent decisions, that fact can be shown against him when and if he takes the stand in his tax case in Washington.

"Now, I think that I should call this to the attention of the committee at the very outset. I think the Government must make an educated choice here. It must decide whether the tax case is more important or whether this hearing of this witness is important.

"Because, under the decisions, especially in the Delaney case in the first circuit, where there was a comparable situation, the first circuit court of appeals reversed the conviction against Delaney and held that the Government could not at once proceed in the judicial system by indictment and at the same time hold open hearings on matters relevant to the indictment.

"In the Delaney case, I hasten to call your attention to the fact, Mr. Chairman, Delaney was not called before the King committee, but witnesses were called after his indictment concerning financial transactions.

"I say these things so that the committee will understand the position we are taking, because I think candor requires me to say that I propose to recommend to counsel who handles the tax case in the Federal district court in Washington that full exploitation be made of the defendant's rights under the Delaney decision.

"Secondly, I must say to you, Mr. Chairman, that if you do not defer this hearing that I must advise this witness to refuse to answer any questions, on the basis of the fifth amendment, which I deem to be relevant in any way to the matter pending in the Federal district court in Washington.

"My formal request, Mr. Chairman, is that you defer his appearance until such time as his tax matter is adjudicated."

Following the above statement of Mr. Williams, the Hearings proceeded as follows (Hearings, p. 2379):

The CHAIRMAN. "All right. The Chair wishes to make this statement: The staff has made a compilation here of the instances in which Mr. Beck may have misused his authority and position as president of the Western Conference of Teamsters, a position of trust, and subsequently as president of the International Brotherhood of Teamsters.

"I am going to ask counsel of the committee to read to Mr. Beck these items, one by one. We will give him an opportunity to answer or to make any comment that he desires.

"Counsel, of course, can advise his client if any of the questions he thinks, under the circumstances, require advice that he take the fifth amendment. He has a right to do that."

The compilation referred to in the above statement consisted of 52 items of alleged misappropriations of funds and other misconduct on the part of the Petitioner. This list of items was, of course, distributed to the press.

Petitioner was then further interrogated and, upon advice of Mr. Williams, asserted the privilege against self-incrimination.

Following this second appearance before the Committee, illustrative newspaper headlines were as follows:

"BECK ACCUSED OF 52 MISUSES OF POSITION"

Seattle Times, May 16, 1957.

"McCLELLAN BLASTS BECK FOR 'RASCALITY,' 5TH INVOKED 60 TIMES"

Seattle Post-Intelligencer, May 17, 1957.

"SENATORS VS. DAVE BECK: WHAT ROUND 2 BROUGHT OUT"

"Mr. Beck, indicted May 2 on a charge of income tax evasion, appeared before the Committee for the second time—and pleaded the Fifth Amendment to most questions."

U. S. News & World Report, May 17, 1957.

" 'BECKVILLE' TAKES IN LOTS OF TERRITORY"

Tacoma News-Tribune, May 18, 1957.

"LABOR RACKETS: DOOMED?"

(Article begins)

"Is Dave Beck Doomed? . . ."

Newsweek, May 20, 1957.

"INVESTIGATIONS: HIS MAJESTY THE WHEEL"

"Untangling the knotted skein of corruption that spewed from the power wheel of Teamster Boss Dave Beck, the Select Senate Committee . . ."

Time Magazine, May 20, 1957.

"McCLELLAN 'LAYS' MANY CRIMINAL ACTS TO BECK"
Seattle Post-Intelligencer, May 21, 1957.

"OFFICIAL TRANSCRIPT—THE CASE AGAINST DAVE BECK AS SENATORS SEE IT"
U. S. News & World Report, May 24, 1957.

"BECK JR. TAKES 5TH 130 TIMES; BECK SR. ARRAIGNED IN TAX CASE"
Seattle Post-Intelligencer, June 5, 1957.

"DAVE BECK JR. TAKES 5TH: FATHER PLEADS INNOCENT"
Seattle Post-Intelligencer, June 5, 1957.

"DENIES PLEA FOR TRIP TO EUROPE BOLDT RULES BECK CAN'T LEAVE U. S."
Tacoma News-Tribune, June 7, 1957.

"TEAMSTERS TOLD TO OUST BECK— OR ELSE"
Seattle Post-Intelligencer, June 8, 1957.

Cover on the *Saturday Evening Post*, lead article is listed on the cover as:
"THE UNKNOWN SLEUTH WHO TRAPPED DAVE BECK"
Saturday Evening Post, July 6, 1957.

(This article was written by Carmen Bellino who, at the time of publication of the article, was still employed as an accountant-investigator for the Senate Committee.)

"COURT REFUSES TO PERMIT DAVE BECK TO LEAVE U. S."
Seattle Post-Intelligencer, July 8, 1957.

July 12, 1957

On this date the grand jury which had been impanelled in King County, Washington, returned an indictment against Petitioner and his son. Petitioner was charged with embezzling the sum of $1900. R. 23-24.

Radio and television reports continued, of course, as did the newspaper headlines:

"JURY INDICTS DAVE BECK ON GRAND-LARCENY CHARGE"
Seattle Times, July 12, 1957.

"DEFRAUDED UNION, SAYS ACCUSATION"
"CHARGED WITH SELLING CAR OWNED BY UNION FOR $1900 AND POCKETING PROCEEDS"
Tacoma News-Tribune, July 12, 1957.

"GRAND JURY INDICTS BOTH BECKS ON GRAND LARCENY CHARGES"
Seattle Post-Intelligencer, July 13, 1957.

July 22, 1957

On or about this date the federal grand jury sitting in Tacoma resumed its deliberations. The jurors had been permitted to read the newspapers and observe television reports and comments, and were permitted to continue doing so. R. 42-43.

"GRAND JURY PLANS ANOTHER STUDY OF BECK'S TAX RETURNS"
Olympia News, July 22, 1957.

"JURY TO SCAN BECK RETURNS"
Tacoma News-Tribune, July 22, 1957.

"BECK TAX PROBE START IS EXPECTED"
"GRAND JURY BEGINS TOMORROW AT
FEDERAL DISTRICT COURT
HERE TOMORROW"
Tacoma News-Tribune, July 28, 1957.

"THE BUSY DESCENT OF DAVE BECK"
Featured article in
Look Magazine, August 6, 1957.

"2 TOP TAX MEN HERE FOR PROBE"
"JUSTICE DEPT. PAIR IN CONFERENCE
WITH LOCAL U. S. ATTORNEYS
IN BECK INQUIRY"
Tacoma News-Tribune, August 16, 1957.

"CAN LABOR LIVE DOWN DAVE BECK?"
Article, *Saturday Evening Post*, August 24, 1957.

August 28, 1957

On this date the second indictment against Petitioner was returned by the grand jury. R. 435.

The headlines continued:

"BECK, SON INDICTED ON TAX CHARGES"
Seattle Post-Intelligencer, August 29, 1957.

"BECK DENIED GRAND JURY RECORD"
"NO ESCAPE FOR HOFFA"

"It's impossible to believe that James R. Hoffa will be seated and long remain as president of the Teamsters Union.

"All the forces of morality, honesty, decency and honor oppose him. They destroyed Dave Beck and they have already started to crush Hoffa."

Editorial,
Tacoma News-Tribune, October 25, 1957

December 2, 1957

On this date the trial of Petitioner in the State Court for embezzlement of $1900.00 was commenced. The newspaper headlines announced:

"DAVE BECK'S GRAND LARCENY TRIAL OPENS"
Tacoma News-Tribune, December 2, 1957.

"DAVE BECK TOP STORY OF 1957 IN WASHINGTON"
Tacoma News-Tribune, December 27, 1957.

"DAVE BECK TOP NEWS STORY OF STATE DURING 1957"
Seattle Post-Intelligencer, December 29, 1957.

February 20, 1958

On this date petitioner, having been convicted of embezzlement of $1900.00, was sentenced to imprisonment.

The newspaper publicity reported:

"BECK SENTENCED TO PRISON"
Seattle Post-Intelligencer, February 21, 1958.

"BECK DRAWS 15-YEAR SENTENCE"
Tacoma News-Tribune, February 21, 1958.

"PROBERS RAP HOFFA, BECK"
Tacoma News-Tribune, March 25, 1958.

"FIVE UNION LEADERS CHARGED WITH MISUSE OF $10 MILLION"
Seattle Post-Intelligencer, March 25, 1958.

"DAVE BECK, HOFFA SCORED BY RACKETS COMMITTEE"
Seattle Post-Intelligencer, March 26, 1958.

"BECK, HOFFA, SCORED BY SENATE RACKET PROBERS: UNION BLASTED"
Seattle Post-Intelligencer, March 26, 1958.

May 3, 10, 1958

On these dates there appeared in the Saturday Evening Post an article, in two installments, entitled "What We Learned About Labor Unions." The article was written by Senator John McClellan, Chairman of the Senate Committee. The article contained numerous accusations and assertions of misconduct against Petitioner. The article reads in part:

> "'Sworn testimony before us exposed, as never before, the crookedness and criminality pervading the leadership of this far-flung organization. Our findings contributed to the retirement of Dave Beck from the presidency of the union, and to the expulsion of the Teamsters from the AFL-CIO. I wish I could hail these as triumphant achievements.
>
> "'The melancholy fact is that, unless and until Congress passes the needed new laws, there can be only faint hope of improvement. Beck's successor as president, James Hoffa, may well be the more dangerous man of the two—younger, craftier, more ambitious, and with even closer ties to the criminal underworld . . .
>
> "'The evidence on the Teamsters has been extensively publicized in the press and on the air waves. Here, therefore, I will touch on only a few high points.
>
> "'In February the still-wealthy Dave Beck, in his home town of Seattle, was tried by a jury, convicted and sentenced to prison for from three to fifteen years for stealing $1,900 from the union he once headed. His lawyers will appeal.

" 'Some commentators have called the sentence "severe" on the sixty-three-year-old Beck. I wish I could share this lenient sentiment. But having listened to all the testimony before our committee—including Beck's own, in which he took the Fifth Amendment 140 times in one session—my sympathy is on the side of his victims. I cannot help noting that figure of $1,900. The sum is such a tiny one, such a little drop in a big bucket, compared to the vast sums—in working members' dues—which Beck misused for his own enrichment, according to the evidence before us.' ".

* * * * * *

" 'Let us see briefly what Dave Beck, Sr., did. From modest beginnings, he was raised by his union to its highest honors. He became a prosperous, nationally prominent and respected citzen. He served on parole boards, and, yes, as president of the Board of Regents of the University of Washington. At one time thousands of his working union members, I understand, trusted and almost revered him. His pink features, his gray hair, his innocent blue eyes inspired affection and trust.

" 'He was greatly trusted, and disgracefully did he betray his trust. Among his friends were some honest men. One of them, at least, saw the way he was going and begged him to draw back before it was too late. He curtly rejected that advice and continued on his devious path with insatiate greed. He oppressed and cheated the working members. He plundered their funds on a grand scale by many slick devices. He dealt secretly with favored employers and their crooked go-betweens, to his own profit and the workingman's loss. He worked with crooks and criminals. He—but why go on? Let us leave him with his regrets. But he still clings to his misbegotten wealth. He still has a $50,000 annual pension and the use of a $160,-

000 home, both provided by the union he betrayed.' "

Throughout the summer of 1958 the Senate Committee continued to hold public hearings concerning the alleged criminal activities of officers of the Teamsters Union, particularly James Hoffa, Petitioner's successor as president. Hoffa was continually linked with Petitioner in one way or another; and in the *Saturday Evening Post* article written by the Chairman of the Committee, he was distinguished from Petitioner only by the statement that he knew "more dangerous criminals than Beck."

Some of the headlines during the summer of 1958 were as follows:

"UNION ASKS BECK OUSTER"
Tacoma News-Tribune, May 10, 1958.

"HOFFA LINK TO $17,500 PAY OFF TOLD"
Seattle Post-Intelligencer, August 6, 1958.

"HERE WE GO ONCE AGAIN"

"Corruption, violence, gangster terror. That is the picture of the Teamsters Union now being re-run in the hearing room of the United States Senate McClellan Committee. . . ."
Seattle Post-Intelligencer, August 8, 1958.

"TEAMSTER BOSS DENIES 'COVERING UP' INCOME"
Seattle Post-Intelligencer, August 8, 1958.

"FIVE UNION LEADERS CHARGED WITH MISUSE OF $10 MILLION"

"PROBERS TOLD OF TEAMSTER BEATINGS"
Seattle Post-Intelligencer, August 27, 1958.

"BECK WON'T LEAVE FANCY BIG SEATTLE HOME VERY SOON"

Daily Olympian, September 9, 1958.

From the "Letters to the Editor" column; caption at the top is "The Old Refrain" and letter reads:

"To the Editor:

"If it is possible, I would like to have in print the full 'refrain' or excuse Dave Beck, the teamster, used in refusing to answer questions. Over and over again the same answer. And how many times did he do this?

(signed) A. T. Frivold
1608 So. "M"

"Editor's note:

"Mr. Beck said, 'I must decline to answer the question, because this committee lacks jurisdiction or authority under articles I, II, and III of the Constitution; further I decline to answer because I refuse to give testimony against myself and invoke the fourth and fifth amendments; and further because the question is not relevant or pertinent to the investigation.'"

Tacoma News-Tribune, September 14, 1958.

"UNION LEADER LIST ISSUED BY RACKETS PROBE UNIT CHIEF"

(This story publicizes a list of 141 Teamster union officials about whom testimony had been adduced relating to improper activities. Beck is on the list.)

Article, *Daily Olympian*, September 22, 1958.

During the summer of 1958 there was in progress in the State of Washington a heated political campaign concerning the submission to the voters of Initiative 202, a measure designed to render unlaw-

ful "union shop" agreements between labor and management. The primary argument employed by the initiative's proponents was that of alleged corruption among labor leaders, particularly appellant, and a great amount of television, radio and newspaper publicity and advertising was devoted to repeating and emphasizing the accusations and "findings" of the Senate Committee. The campaign for and against Initiative 202 was the most intensive involved in the 1958 general election in Washington State. R. 352-353. On October 20, 1958, proponents of the initiative published in four daily newspapers of general circulation within the jurisdiction of the trial court a large advertisement containing a photograph of the personal residence which appellant constructed and lived in during the indictment years herein. The text described the house as "the notorious home of Dave Beck in Seattle," and the caption in large type read as follows:

"OVER $300,000 IN UNION DUES WENT INTO THIS HOUSE!"

On October 23, 1958, supporters of the initiative published in four daily newspapers circulated within the jurisdiction of the trial court an advertisement headed, "UNION DUES AND ASSESSMENTS 'PAID' FOR THESE HEADLINES," and containing photographic reproductions of headlines such as "Beck's Arrest Ordered on Tax Charges," "Dave Beck Is Convicted: Teamster Chief Guilty of Theft," and "Beck Profit in Trust Fund of Widow Told." (R. 355-356, and Exhibits filed November 10, 1958)

During the same period, a major party candidate for United States Senator from the State of Wash-

ington published newspaper advertisements stating that he "Wears No Dave Beck Collar, or Any Man's Yoke!" R. 359.

National magazines continued to give prominent coverage to appellant and the issue of alleged labor corruption. The October 10, 1958 issue of *U. S. News & World Report* featured an article entitled "Can The Labor Racketeer Be Stopped?" R. 324. The November 1958 issue of *The Atlantic* contained an article entitled "Teamsters Defy The Government," reading in part as follows:

> " 'It was one lie after another,' Kennedy recalls the general babbling by Beck. 'We had enough documentary information to know he was not telling the truth . . .'
>
> "Dave Beck was sent sprawling by the avalanche of evidence piled up against him in May, and he retreated to the cover of the Fifth Amendment after documents proved that he had engaged in 'a theft' of from $300,000 to $400,000 in union funds."

On October 20, 1958, a national publishing house published a book entitled *"Treasury Agent: The Inside Story,"* describing investigative activities of agents of the Internal Revenue Service. In a section entitled "The Cheaters," the book contained a chapter entitled "The Fall of Dave Beck." The foreword was written by Robert B. Anderson, the Secretary of the Treasury of the United States, and referred to the persons described in the book as having been investigated as "wrongdoers." R. 348-349.

Prior to the trial Petitioner moved for an extended continuance and change of venue. R. 150, 232. On September 23, 1958, because of the continued activities of the Senate Committee, Petitioner again moved for a continuance of the trial.

R. 244. The final motions for continuance and change of venue, and the challenge to the panel of jurors, were denied and the case proceeded to trial on November 10, 1958. R. 343-344.

In connection with the final motion for continuance, six attorneys representing the American Civil Liberties Union of Washington, Inc. filed a Brief Amicus Curiae. The Brief filed by these attorneys was as follows:

> "The American Civil Liberties Union of Washington, Inc. is an organization of citizens concerned with the preservation of the civil liberties of the American people as guaranteed by the Constitution of the United States, and most particularly by the Bill of Rights.
>
> "One of the paramount rights guaranteed by the Constitution is that of a fair trial. Inherent in the concept of a fair trial are the following conditions:
>
> "1. A public atmosphere where the guilt or innocence of the defendant is not prejudged.
>
> "2. A climate of public opinion which would permit the jury to determine the issues solely upon the evidence adduced in court.
>
> "3. The absence of public pressure which would tend to have a coercive effect on the jury's deliberations.
>
> "It is the earnest belief of the Board of Directors of the American Civil Liberties Union, consisting of educators, newspapermen, doctors, housewives, lawyers, and others, representative of the varied strata of American society, that the defendant Dave Beck could not obtain a fair trial at this time because of the climate of public opinion.
>
> "We believe that under the doctrine of *De-*

Two of these attorneys who signed the Amicus Curiae Brief have subsequently been appointed Judges of the Superior Court, King County, State of Washington.

laney v. United States, 199 Fed. (2d) 107, (1st *Circ.*) 1952, the requirements for a fair trial are presently absent.

"We, therefore, join in defendant Dave Beck's motion for continuance of the trial date.

"Respectfully submitted,

/s/ SOLIE M. RINGOLD,
/s/ KENNETH A. COX,
/s/ EDWARD E. HENRY,
/s/ ROBERT W. WINSOR,
/s/ ARTHUR G. BARNETT,
/s/ LADY WILLIE FORBUS,
Attorneys for the American Civil Liberties Union of Washington, Inc." R. 366-367

Thus, adverse and hostile publicity of a most violent nature, stemming from acts of the Senate Committee,[1] continued through October 1958. During the empanelment of the jury, on November 10, 1958, all of the prospective jurors, including those selected to hear the case, were informed, or rather reminded, of Petitioner's assertion of his privilege against self-incrimination by the following proceedings in connection with the *voir dire* of prospective juror Hamilton.

The Court: "Mr. Hamilton, have you followed closely all that has occurred up until now?

Prospective Juror Mr. Hamilton: "Yes, your Honor.

[1] The connection between the Senate Hearings and publicity relating to the State Court proceedings is manifest. On April 26, 1957 Mr. Robert Kennedy, the Chief Counsel of the Senate Committee, stated that the Committee would assist the grand jury which had been empaneled in King County, Washington (R. 25); and on September 21, 1958, less than two months prior to the date of trial, the Chief Counsel of the Senate Committee declared, on a national television program, that the embezzlement conviction of Petitioner was a "direct result" of the activities of the Senate Committee. R. 253.

The Court: "Do you understand that everything said, every question put, was put to you as an individual?

Prospective Juror Hamilton: "Yes sir.

The Court: "Did you ponder these questions and consider them for yourself?

Prospective Juror Mr. Hamilton: "I have, sir.

The Court: "And what your proper response should be?

Prospective Juror Mr. Hamilton: "Yes, sir."

* * * * * *

The Court: "Now, Mr. Hamilton, did you by chance see a telecast or hear a radio broadcast of any Congressional hearing in which Mr. Beck was referred to?

Prospective Juror Mr. Hamilton: "Yes, your Honor, I did.

The Court: "Was there anything arising out of that experience that caused you to form some opinion, either favorable or unfavorable, of Mr. Beck or his activities or his work or his union service, or anything of that kind?

Prospective Juror Mr. Hamilton: "I mention, your Honor, in all honesty,—

The Court (Interposing): "Just 'yes' or 'no.'

Prospective Juror Mr. Hamilton (Continuing): "I formed an unfavorable opinion of Mr. Beck because of his—

The Court (Interposing): "Don't elaborate on it. You did form an opinion?

Prospective Juror Mr. Hamilton: "Yes, sir, because of the Fifth Amendment." R. 572-574

APPENDIX "B"

DAVID D. BECK, a/k/a Dave Beck,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

No. 16424

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

Jan. 20, 1962

As Modified Feb. 14, 1962

Prosecution for income tax evasion and assisting in preparation of false returns. From an adverse judgment of the United States District Court for the Western District of Washington, Southern Division, George H. Boldt, J., the defendant appealed. The Court of Appeals, Barnes, Circuit Judge, held proof that uncertainty as to whether guilty verdict of wilfully evading income tax was based on proof of unreported income coming to defendant as expense money or upon embezzled money required reversal and a retrial.

Affirmed in part and reversed in part and remanded.

Before BARNES, MERRILL and KOELSCH, Circuit Judges.

BARNES, Circuit Judge.

The taxability of embezzled funds has been the subject of legal dispute for several years. This court in 1945, under certain limited facts,[1] held that when an embezzler takes money from an employer with no conceivable claim or colorable claim

1. (a) Proceeds held not as embezzler's funds but as employee's; (b) proceeds never invested (i. e., were gambled away) and which produced no income; and (c) law of Nevada permitted employer to replevin funds, once embezzled; (d) law of Nevada provided embezzler liable to employer for an amount equal to value of embezzled funds.

of right to it, it at no time becomes a taxable "gain" or "profit" or "income" to the embezzler, within the definition of "gross income" as defined in Section 22 of the Internal Revenue Code of 1939 (26 U.S.C. § 22). Wilcox v. Commissioner, 9 Cir. 1945, 148 F.2d 933. This court agreed with the fifth circuit opinion of McKnight v. Commissioner, 1942, 127 F.2d 572, which in turn relied on language used in North American Oil Consolidated v. Burnet, 1932, 286 U.S. 417, 424, 52 S.Ct. 613, 76 L.Ed. 1197. Our opinion distinguished the holding in Helvering v. Clifford, 1940, 309 U.S. 331, 60 S.Ct. 554, 84 L.Ed. 788.

This court's decision was upheld in Commissioner of Internal Revenue v. Wilcox, 1946, 327 U.S. 404, 66 S.Ct. 546, 90 L.Ed. 752, wherein the Supreme Court ruled:

"[A] taxable gain is conditioned upon (1) the presence of a claim of right to the alleged gain and (2) the absence of a definite, unconditional obligation to repay or return that which would otherwise constitute a gain. • • • "; that " • • • the bare receipt of property or money wholly belonging to another lacks the essential characteristics of a gain or profit • • • " (327 U.S. at 408, 66 S.Ct. at 549) unless there exists a *use* of the embezzled moneys, or a *cancellation* of the indebtedness (created by law) for an amount equal to the embezzled funds.

The Supreme Court again had the matter before it in the recently decided case of James v. United States, 1961, 366 U.S. 213, at 215, 81 S.Ct. 1052, at 1053, 6 L.Ed.2d 246:

> "Six years later, this Court held, in Rutkin v. United States [1945] 343 U.S. 130 [72 S. Ct. 571, 96 L.Ed. 833], that extorted money [in 1943] does constitute taxable income to the extortionist in the year that the money is received under § 22(a) of the Internal Revenue Code of 1939. In Rutkin, the Court did not overrule Wilcox, but stated:
>
> " 'We do not reach in this case the factual situation involved in Commissioner [of the Internal Revenue] v. Wilcox, 327 U.S. 404 [66 S.Ct. 546, 90 L.Ed. 752]. We limit that case to its facts. There embezzled funds were held not to constitute taxable income to the embezzler under § 22(a).' Id. [343 U.S.] at page 138 [72 S.Ct. at 576].
>
> "However, examination of the reasoning used in Rutkin leads us inescapably to the conclusion that Wilcox was thoroughly devitalized.".

The Supreme Court in James then pointed out that Rutkin's claim was no greater than that of Wilcox; that both had obtained money by means of a criminal act; that neither had a bona fide claim of right to the funds; that both could be required to make restitution, i. e., "the right to recoupment exists in both situations." Thus, "the Wilcox rationale was effectively vitiated by this Court's decision in Rutkin," as several circuit courts have previously stated. "Wilcox was wrongly decided."

The court then stated:

> "When a taxpayer acquires earnings, lawfully or unlawfully, without the consensual recognition, expressed or implied, of an obligation to repay and without restriction as to their disposition, 'he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.' North American Oil [Consolidated] v. Burnet, supra [286 U.S.], at p. 424 [52 S.Ct. at p. 615]. In such case, the taxpayer has 'actual command over the property taxed—the actual benefit for which the tax is paid.' Corliss v. Bowers, supra [281 U.S. 376, 50 S.Ct. 336, 74 L.Ed. 916]. This standard brings wrongful appropriations within the broad sweep of 'gross income'; it excludes loans. When a law-abiding taxpayer mistakenly receives income in one year, which receipt is assailed and found to be invalid in a subsequent year, the taxpayer must nonetheless report the amount as 'gross income' in the year received. United States v. Lewis, supra [340 U.S. 590, 71 S.Ct. 522, 95 L.Ed. 560]; Healy v. Commissioner, supra [345 U.S. 278, 73 S.Ct. 671, 97 L.Ed. 1007]. We do not believe that Congress intended to treat a lawbreaking taxpayer differently." Id., 366 U.S. at 219-220; 81 S.Ct. at 1055.

However, in James, because a felony conviction must rest upon a *willful* failure to account, or a *willful* attempt to evade taxes (Spies v. United States, 1943, 317 U.S. 492, 63 S.Ct. 364, 87 L.E. 418), and *specific intent* must be proved by independent evidence and cannot be inferred from the mere understatement of income (Holland v. United States, 1954, 348 U.S. 121, 139, 75 S.Ct. 127, 99 L.Ed. 150), a divided Supreme Court ruled that the "gloss put upon [the statute] by Wilcox" prevented a conviction for "failing to include em-

2 See note 6, James v. United States, 1961, 366 U.S. 213, 81 S.Ct. 1052, 6 L.Ed.2d 246

bezzled funds in gross income in the year of misappropriation," while Wilcox was the law of the land.

With this clarification of the law on the taxability of embezzled funds before us (which did not exist at the time of trial below), we turn to the facts of the instant case.

Appellant Dave Beck was indicted in May 1957 on two counts, one under 26 U.S.C. § 145(b), the other under 26 U.S.C. § 3793(b) (1).[3] In August he was indicted by the same grand jury on three additional counts under § 145(b), on two additional counts under § 3793(b) (1), and with codefendants under 18 U.S.C. § 371 on two counts charging a conspiracy to evade payment of his taxes. The seven counts which named Beck alone were segregated for trial. The trial began in November 10, 1958. At that time the government dismissed one of the counts against appellant. In February 1959 a jury returned verdicts of guilty as to the remaining six counts. Appellant was sentenced to five years imprisonment, and required to pay costs amounting to about $11,000 and various fines totaling $60,000. This court has jurisdiction on appeal. 28 U.S.C. § 1291. Appellant was sentenced to five years imprisonment on each of the six counts on which he was convicted, the sentences to run concurrently. He was also sentenced to pay

3. 26 U.S.C. 1952 ed., Sec. 145 (b) reads as follows:

"§ 145. **Penalties**

* * * * * *

"(b) **Failure to collect and pay over tax, or attempt to defeat tax.** Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

4. 26 U.S.C. 1952 ed., Sec. 3793(b) (1) reads as follows:

"§ 3793. **Penalties And Forfeitures.**

* * * * * *

(b) **Fraudulent returns, affidavits, and claims.**

"(1) **Assistance in preparation or presentation.** Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

fines of $10,000 on each count, or a total of $60,000, and to pay costs amounting to about $11,000.

If the sentences were wholly concurrent, one count free from error would sustain the conviction; that is, we would look no further. See, for example: Sinclair v. United States, 279 U.S. 263, 299, 49 S.Ct. 268, 73 L.Ed. 692; Abrams v. United States 250 U.S. 616, 619, 40 S.Ct. 17, 63 L.Ed. 1173; Russell v. United States, 9 Cir. 1961, 288 F.2d 520, at 522 (and cases there cited); Hattem v. United States, 9 Cir. 1960, 283 F.2d 339, 341; Green v. United States, 9 Cir. 1960, 282 F.2d 388, 392; King v. United States, 9 Cir. 1960, 279 F.2d 342, 344.

Hereinafter, we uphold the convictions on two counts, but examination of all counts here became necessary because of the separate fine assessed on each count. As will appear, we find reversal on four counts necessary. The judgment for costs will stand.

FACTS

During the period from 1950 to 1953 appellant misappropriated to his own personal use some $365,000 of the funds of the various union entities with which he was associated. This amazing series of embezzlements is detailed in the appellee's brief (pages 31-86). It would serve no useful purpose to repeat the details here. Beck and certain of his close associates had the power to sign checks on the accounts of certain union entities. Checks on these various accounts were used to pay Beck's personal bills, to purchase property in his name, or to pay sums to third persons who used the money to Beck's advantage.

There was further proof (the materiality of which hereinafter becomes evident) of instances in which Beck received expenses for various travels from two sources, either being reimbursed by two labor organizations for the same trip, or being reimbursed once and charging the trip on credit cards payable at a later time by the union. Travel expenses totaling $35,000 were claimed and paid to Beck but were not used by him to pay the cost of travel on the union's behalf.

During the period that the grand jury met to indict Beck on this charge, there was considerable adverse publicity in the communications media concerning his refusal to testify before a congressional committee as to certain matters. Beck has been

convicted of embezzlement in the state court of Washington on a charge of dealing with a very small portion of the funds which form the basis of this case.

On this appeal Beck asserts some twenty-five specified errors which may be summarized as follows:

1 That appellant was deprived of an unbiased grand jury.

2 That appellant was deprived of an unbiased petit jury.

3 Error was committed in the restriction of the cross-examination of government witness Hupf.

4 That the funds taken were either embezzled or borrowed, and neither source would constitute taxable income.

5 If embezzled funds did constitute taxable income, the state of the law was such that no one could knowingly willfully evade taxes thereon.

6 Failure of proof on the counts concerning the Joint Council Building Association returns. These are the so-called "900" counts charging the aiding, assisting and filing of false union returns.

7 Error in admitting evidence of destruction of appellant's records, and in instructing the jury thereon.

8 Error in admitting evidence of appellant's refusal to cooperate with the Internal Revenue Service, and in instructing the jury thereon.

We will consider each of these eight contentions of appellant in turn, with four and five considered together.

I

Was appellant deprived of an unbiased grand jury?

1 At the time the grand jury returned the indictments which were the subject of this prosecution in 1957, appellant was very much in the headlines as a corrupt labor boss. Many of the newspaper headlines were introduced as exhibits below, and are reproduced in the brief. There was a high concentration of such headlines in the State of Washington where appellant lived and was indicted. From this evidence appellant urges that it is apparent that he was denied his right to an

1 Appellant summarizes these under nine "parts" of his argument. We reduce the number to eight by consolidating four and five which are really one, as four

impartial grand jury. *There was no evidence that in fact the grand jury was prejudiced or that any member thereof had been affected by the vast amount of publicity accorded Beck.*

[2] The cited cases which have reversed convictions have been based on something more than exists here. The usual case concerns the systematic exclusion of some certain class or classes of citizens, from which it can be strongly inferred that prejudice has resulted. The civil rights protected in these cases are bigger than the rights protecting any criminal or criminal class from the unfavorable publicity resulting from their own corrupt or illegal acts. We rule that a specific showing of prejudice is necessary to make erroneous the action of the trial judge in refusing to dismiss the indictment. The court here so ruled following an *in camera* examination of the minutes of the grand jury. We find no error.

II

Was appellant deprived of an unbiased petit jury?

[3] The trial judge refused a final motion to continue the trial or change venue. It is asserted this was error and caused appellant to be tried before a prejudiced petit jury. Prior to the final denial the following continuances of the appellant's trial had been granted by the trial court:

6. From appellant's brief we quote, after a reference to the Washington law defining embezzlement:

"It was under this statute that appellant was convicted in 1957 of embezzling $1900 from the Western Conference of Teamsters.

"The evidence in the present case shows beyond dispute that appellant in his capacity as officer and employee, was in custody and control of the finances of the union organizations involved, and that he withheld and appropriated the same to his own use (whether as a loan or otherwise) without the knowledge of the governing boards of officers of the organizations. He 'directed and controlled' the operations of the unions (Tr. 6099) and was 'in possession' of their funds (Tr. 4825). He was signator to their bank accounts and unilaterally issued checks drawn thereon. He did not render accountings or financial statements to the unions, the handling of financial matters was left largely to him, and he was not required to give reasons or make representations as to the purposes for which he was dispensing union funds (Tr. 4353, 4359, 4363, 4366, 4374-4376, 4380, 4409-4410, 4440, 4444-4450, 4458, 4895, 4898, 4970, 5103-5104, 5109, 6006, 6022-6029).

"There was no evidence to support a conclusion that appellant obtained the funds by false pretenses or any comparable means. If not loans, the acquisitions were purely the proceeds of embezzlement, as that term has been defined both historically and by modern statute." (Brief of Appellant, pp. 69-70.)

(a) October 28, 1957: for a period of six months.
(b) January 21, 1958. for a period of six weeks.
(c) April 1958: indefinitely.

The trial commenced on November 10, 1958, over a year and six months after the indictments had been found. (May 1957).

The appellant points to all the newspaper publicity existing before the public during the period previous to his trial, as evidence as a matter of law that it would have been impossible to find a panel of jurors which did not have information about the case obtained outside the courtroom. He relies largely on Delaney v. United States, 1 Cir. 1952, 199 F.2d 107, to prove this error.

In Delaney the government activities which created the prejudice complained of were much more contemporaneous with the trial than is the case here. The first motion made by defendant Delaney for a continuance of his trial, denied in the district court and found error by Judge Magruder, was made on November 15, 1951, *two months* after the original indictment (found September 14, 1951). His second motion, made November 29, 1951, was granted and a one-month continuance was given Delaney. His third motion, made January 3, 1952, (three and a half months after the original indictment) was denied. The court in Delaney recognizes that "the prejudicial effect of * * * publicity" cannot "be said * * * as a matter of law" to be "so permanent, and ineradicable by mere lapse of time" that a fair trial "at any time within the foreseeable future" was impossible. (199 F.2d at 112.)

Here the indictments were all over fifteen months old, congressional hearings had not concerned Beck for more than a year, and his embezzlement conviction in state court was over ten months old. There was some continuing publicity about Beck, but it seems obvious that it would be impossible ever to bring this defendant to trial if it were necessary to await a complete abatement of all publicity concerning a man so much in public view.

A careful review of the record as to voir dire testimony of the empaneled jurors is required of this court. Irvin v. Dowd, 1960, 366 U.S. 717, 722, 81 S.Ct. 1639, L.Ed.2d 751. We believe the judge conducted the voir dire in an able and admirable fashion, particularly in view of the difficulties under which he labored.

[4] While the juror must be "indifferent as he stands unsworne," it is

> " * * * not required however that the jurors be totally ignorant of the facts and issue involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Spies v. [People of State of] Illinois, 123 U.S. 131 [8 S.Ct. 21, 31 L.Ed. 80]; Holt v. United States [218 U.S. 245, 31 S.Ct. 2, 54 L.Ed. 1021; Reynolds v. United States], 98 U.S. 145 [25 L.Ed. 244].
>
> " * * * As stated in Reynolds, the test is 'whether the nature and strength of the opinion formed are such as in law necessarily * * * raise the presumption of partiality. The question thus presented is one of mixed law and fact * * *.' At p. 156 of 98 U.S. 'The affirmative of the issue is upon the challenger. Unless he shows the actual existence of such an opinion in the mind of the juror as will raise the presumption of partiality, the juror need not necessarily be set aside * * *. If a positive and decided opinion had been formed, he would have been incompetent even though it had not been expressed.' At p. 157 of 98 U.S. As was stated in Brown v. Allen, 344 U.S. 443, 507 [73 S.Ct. 397, 446, 97 L.Ed. 469], the 'so-called mixed questions or the application of constitutional principles to the facts as found leave the duty of adjudication with the federal judge.' " (366 U.S., at 722-723, 81 S.Ct. at 1642.)

[5] For us to hold that the trial judge committed error as a matter of law would mean that a judge could never determine that the effect of prejudicial publicity could ever die down to a point where it was no longer prejudicial. Cf. Stroble v. State of California, 1951, 343 U.S. 181 at 193, 72 S.Ct. 599, 96 L.Ed. 872. The result would be that no public figure could ever be tried so long as one derogatory news item concerning him appeared in the public press. This we cannot and will not hold. The area of the trial judge's discretion must be large.

Lisenba v. People of State of California, 1941, 314 U.S. 219 at 228, 62 S.Ct. 280, 86 L.Ed. 166. And "the findings of the trial court upon that issue [the force of a prospective juror's opinion] ought not to be set aside by a reviewing court, unless the error is manifest." Reynolds v. United States, 1878, 98 U.S. 145, 156, 25 L.Ed. 244, quoted with approval in Irvin v. Dowd, supra

The principal charge of prejudice existing against defendant and appellant Beck relates to Juror Hamilton. *He was excused by the trial judge.* It is true that he made a specific explanation as to why he was prejudiced against Beck—this resulted in a motion for a mistrial, which was denied. An admonition to the jury was promised by the trial court and was given.

We find no "manifest" error—no clear and convincing proof of prejudice existing in the mind of any juror finally accepted and empaneled.

III

Was there error in restriction of certain cross-examination?

[6, 7] The final government witness, Hupf, testified to conclusions drawn from the evidence in the trial as a whole, and presented these conclusions in the form of a summary or balance sheet of appellant's finances, showing his increase in net worth over the indictment years. (The government used the net worth plus expenditures method of proof of income, since the taxpayer's records had been destroyed.) Hupf's cross-examination was restricted. The appellant characterizes this restriction as a refusal to allow him to test the conclusions of the witness by ascertaining the basis for them. The questions concerned the reason for the expert's failure to include the amount of admittedly embezzled funds as liabilities of appellant, when he constructed the balance sheet. The government contends that the court was merely preventing the defense from quibbling with the witness over a point of law, and further points out that the cross and voir dire-examination of the witness was generally unrestricted and voluminous, covering some two hundred pages of the record. The rulings complained of are on pages 10,463-4 and 10,466-7 of the transcript. We have examined these and find no error. The extent to

which cross-examination of a witness will be allowed rests in the sound judicial discretion of the trial court. We find no abuse of that discretion. District of Columbia v. Clawans, 1937, 300 U.S. 617, 632, 57 S.Ct. 660, 81 L.Ed. 843; Alford v. United States, 1931, 282 U.S. 687, 694, 51 S.Ct. 218, 75 L.Ed. 624; United States v. Johnson, 9 Cir., 1961, 285 F.2d 35, 40, and cases there cited.

IV and V

The taxability of embezzled funds.

[8] With this alleged error we reach the heart of appellant's case. Almost all, but not the entire sum, which was unreported as income by Beck was embezzled funds. Beck, on appeal, admits that the jury was presented the problem of determining whether the funds constituted a loan from the union to Beck (in which case they were instructed to acquit) or embezzled funds (in which case they were instructed to convict). Appellant admits that the finding of guilty meant that the jury considered those funds allegedly embezzled to have been embezzled, and income.

The James case, supra, does not change the rule that a failure to report income realized through criminal activities *other than embezzlement* (as for example, larceny by false pretenses) may be punished criminally as a willful tax evasion for failure to report income.

But, says appellant, here there was in the record evidence "from which it could be inferred that appellant had authority to lend union moneys to himself, or others." The court left that issue to the jury, and instructed the jury that proceeds from loans do not constitute taxable income. The jury verdict impliedly rejected the theory of a loan. Hence, says appellant, *the only possible alternative conclusion* is that the jury found the funds were embezzled.

The government disputes the validity of such a simple conclusion, maintaining that the evidence discloses that (1) it could have been found by the jury to be compensation for services rendered, for Beck so treated and so considered the sums

taken by him, hence there could be no willful violation of a state law defining embezzlement; and (2) even if Beck intended to embezzle, as defined by Washington law, he never had lawful possession of the union funds as such, so as to permit embezzlement.

Obviously, if Beck did obtain the money as compensation for services rendered, he was required to pay taxes thereon. Therefore we reject the conclusion that the moneys received by Beck were necessarily loans, or embezzled funds, and could be nothing else. They could have been found to have been either simple compensation or funds obtained by criminal activities other than embezzlement.

But we cannot read the jury's mind. If the jury found the unreported cash to be either embezzled or obtained from other criminal activities or compensation for services rendered, the jury could have found Beck guilty. It was only if they were found to be loans that Beck would be found not guilty. (We here are temporarily not concerned with the rule of the Wilcox, supra, case, or the effect of Rutkin, supra, on that rule, or Beck's knowledge of or reliance upon those cases or any others.)

[9] Entirely apart from the larger sums of money either embezzled or paid as compensation or obtained as a loan or obtained through other criminal (non-embezzling) methods, the government points to the fact that there were moneys paid as reimbursement for travel expenses which allegedly would clearly fall within the fourth class of receipts mentioned above, funds obtained through criminal but nonembezzling methods. There having been but a general verdict and no special verdicts entered below, we have no way of determining whether the double receipt of travel money was or was not relied on by the jury to convict the appellant. As appellant correctly states in his brief, "When two theories are submit-

7. (1) The evidence discloses that Beck was paid no salary but had unlimited authority, intentionally granted by the union, to take any and all funds he desired.

(2) There was testimony Beck could have named for himself any salary he desired.

(3) There was evidence no accounting was ever required of Beck.

(4) There was in evidence the conduct of the union after Beck's indictment, including the execution of the accord and satisfaction entered into. (Pl. Ex. 692) between Beck and the union.

ted to a jury, one of which is incorrect, a general verdict of guilty must be reversed even though the jury was properly instructed upon the alternate theory." Williams v. State of North Carolina, 1942, 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279; Stromberg v. People of State of California, 1931, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117.

These "expense moneys" which wound up in appellant's control are distinguishable from loans and embezzled funds. To fully understand the matter we refer to and adopt the resume of appellant with respect thereto.

8. At all times material, appellant traveled extensively and received from union entities substantial sums by way of travel and expense allowances and advances, which sums were not in fact expended by him for such purposes. As an officer of the International Union, he carried a credit card issued by that organization on which he charged transportation costs. (Tr. 7363-7364.) In addition, he was entitled to a "hotel allowance" of $15 a day when in travel status and on occasion received considerably more, a per diem allowance of first $5 and later $7.50 a day, whether traveling or not, and, beginning in 1953, a car allowance of $150 a month. (Tr. 7308-7309, 7559.) The hotel and other allowances, plus miscellaneous expenses such as cab fares and sundry items, were claimed by appellant on monthly salary and expense statements which he submitted to the International Union. (Exhibits 778 through 788K; Tr. 7302.) In these statements appellant sometimes claimed a hotel allowance of as high as $40 a day. The monthly vouchers were prepared by his secretary, Ann Kotin, partly from information already in her possession, and partly from information given to her by appellant. His salary and expense checks from the International Union were deposited in his wife's bank account. (Tr. 6709-6720, 6732.)

In most instances, the hotel and travel allowances which appellant received from the International Union were not in fact expended by him for such purposes. For example, after appellant assumed the presidency of the International Union in late 1952, he continued to maintain his permanent residence in Seattle, with offices in both Seattle and Washington, D. C. When in Washington, he claimed and received the regular hotel allowance of $15 a day but stayed in an apartment at the Woodner, the rent for and expenses of which were paid by the International Union. (Tr. 6695-6696, 6720-6722, 7493.) On many other occasions during the indictment years when appellant's hotel bills were paid directly by the International Union, he nonetheless claimed and received the regular hotel allowance for the same travel. (The hotel bills which the International Union paid for appellant contained not only room charges but charges for such extras as meals, telephone calls, valet service, auto rental and sundries. (See, e. g., Tr. 7440.) No other staff member of the International Union was accorded such a "privilege." (Tr. 7561.) Moreover, appellant was accompanied by his wife on some of his travels and her expenses on these occasions were also paid by the International Union. Tr. 7395-7415, 7425-7449.)

On other occasions, appellant was reimbursed for the same travel by more than one union entity. For instance, in February 1950 he attended meetings in Miami, Florida, of the executive boards of the International Union and the American Federation of Labor. His air transportation to and from Miami was charged to the International

The receipt of such expense money in certain years may well distinguish this case from the James case. If such expense money is found by the trier of fact to have been acquired other than by embezzlement, then the James case is not controlling. Recognizing this, appellant in his supplemental brief filed after the decision in the James case, urges us to take the position that "the evidence is insufficient as a matter of law on the issue as to whether the expense moneys constitute income."

Because the government produced records of hotel bills in only eleven cities of the United States, says appellant, there is no proof he did not spend the moneys doubly paid him for services in such named cities to *other* hotels, or in *other* cities. Such expenses were heavy, says appellant. This can be admitted, but does not solve the problem.

[10] Once the government proves unreported receipts by a taxpayer, has allowed all the deductions claimed in taxpayer's return, has allowed all deductions developed and discovered in the government's investigation, where it has exhausted all leads suggested or provided by the taxpayer indicating in-

Union. In the voucher which he submitted to the International Union for this month, he claimed and received a hotel allowance of $40 a day for the 19 days he was in Miami. While in Miami, he attended a concurrent meeting of the executive board of the Union Label Trades Department of the American Federation of Labor. For attending this concurrent meeting, appellant claimed and received from the Union Label Trades Department, a fee and traveling expenses totaling $687.35. (Tr. 7184-7204, 7391-7395, 7420-7423.) In August 1950 and January 1951, he again received payments under similar circumstances in the amounts of $498.63 and $541.71, respectively, from the Union Label Trades Department. (Tr. 7198, 7284.)

On another occasion, appellant included in an expense voucher submitted to the International Union one item which he did not in fact pay, and another which was personal in character. Thus, in the voucher which he submitted to the International Union for the Month of January 1953, he claimed and received reimbursement for a "consultation expense" of $128.70, allegedly paid to Wampold. (Tr. 7323-7324.) The latter denied having received any such fee from appellant. (Tr. 6985-6986.) Included in the same voucher was an item of $125 paid by appellant to his investment counselor, Loomis.

Moreover, the International was not the only union entity which paid hotel bills and travel expenses of appellant. At appellant's direction hotel bills and restaurant checks were frequently mailed to him at a post office box address in Seattle. Upon his return to Seattle, appellant would then direct McDonald to prepare Western Conference or Joint Council No. 28 checks in payment of these bills. McDonald entered the checks in the books as officers' or convention expense. Tr. 4464-4467.) Appellant never submitted to McDonald any expense voucher or statement other than an occasional hotel bill—in support of these checks. But all other officers and employees of the

come and deductions, and where the taxpayer chooses to refuse to supply any additional information, the government has established a *prima facie* case, if the income exceeds the deductions and was not reported as taxable. United States v. Bender, 7 Cir. 1955, 218 F.2d 869; United States v. Stayback, 3 Cir. 1954, 212 F.2d 313; Clark v. United States, 8 Cir. 1954, 211 F.2d 100, 103; Remmer v. United States, 9 Cir. 1953, 205 F.2d 277; United States v. Link, 3 Cir. 1952, 202 F.2d 592, 593; United States v. Hornstein, 7 Cir. 1949, 176 F.2d 217, 220; Barrow v. United States, 5 Cir. 1948, 171 F.2d 286, 287. But see Cohan v. Commissioner, 2 Cir. 1930, 39 F.2d 540, 543-544.

Thus the proof of such unreported income coming to Beck as expense money could support a verdict of guilty of willfully evading the tax. Is that the basis of the jury's verdict in this case, or was it embezzled money? We cannot read the jury's mind, and we conclude it becomes necessary to reverse the conviction of Beck on the four counts relating to tax evasion and order a retrial of that issue, at which time such additional evidence, instructions and special verdict or verdicts, if any, may be placed before the jury as may be deemed necessary by

Western Conference and Joint Council including Brewster (Tr. 5643, 5673-5674) were required to submit expense vouchers. (Tr. 4467-4471, 4805-4808, 4839, 4882-4885.) Appellant's secretary handled all his regular mail but not mail received by him at the post office box, and she had no knowledge of the fact that he was receiving traveling expenses from union entities other than the International. (Tr. 6711, 6762-6763.) Irrespective of what union entity paid his hotel bills, whenever appellant was away from Seattle the International Union was billed for the regular hotel allowances.

Appellant did not report in his returns for any of the years in question the receipt of any travel allowances or other such expense monies. (Tr. 10,297-10,310; Exhibits 6 through 9.) In an effort to determine what amounts were actually received and expended by appellant, personally, for travel during the indictment years, Special Agent Gordon Skelton, among other things, solicited hotels in twenty-five major cities in the United States and Hawaii. The agents also analyzed in detail the various bank accounts of appellant and his wife.

During the years 1950, 1951, 1952 and 1953, appellant received from the International Union alone travel allowances totaling $8,188, $7,901, $8,639 and $14,345, respectively. (Tr. 9532-9533.) His known hotel bills for the same period totaled $17,695, of which sum $16,578 was paid by union entities. (Tr. 9535-9539.) No hotel bills or other travel expense were paid by checks drawn on the personal bank accounts of appellant or his wife. (Tr. 9559, 9564-9565.) An analysis of the bank accounts, and of all known receipts and expenditures of appellant, disclosed that he had no cash available from reported income with which to pay travel expenses. Accordingly, appellant could not have expended any cash for travel expenses without increasing further the bulge between his reported and his true income for the period. (Tr. 9896-9905, 9917-9918, 10,297-10,310.)

the trial court in view of the law as it has developed since the previous trial, with particular reference to the teachings of the James case, supra.

VI

Insufficiency of the evidence to support the verdict as to the two counts ("900 Counts") involving returns of the Joint Council Building Association for the years 1950 and 1952.

[11] The appellant asserts the insufficiency of the evidence on these counts because Exhibits 50 and 51 were signed by Brewster, the secretary-treasurer of the union, and by McDonald, the bookkeeper, and prepared by the latter "unassisted, uninstructed, and entirely on the basis of his own assumptions plus a minimal amount of information from John Lindsey, Jr., the building contractor."

The Joint Council Building Association filed its "990" returns each year from 1941 through 1950, 1952 and 1953. The 1942 and 1945 returns were signed by appellant. The 1951 return was delivered to appellant's office for signature by McDonald, because the payments of amounts in excess of $90,000 to John Lindsey, Jr., were "extraordinarily high," and McDonald wanted Mr. Beck to pass on their correctness. (Some $46,000 of the amount paid Lindsey in 1951 was for the personal use and benefit of appellant. (Tr. 10,172-10,173.) This "990" form for 1951 was never filed.

The 1950 and 1952 "990" forms *were* filed. The record substantiates the government's contention that they were false in the following particulars:

> "The return for 1950 (Ex. 50) reflected an expenditure by the Association of $16,718 for building payments and alterations. Of this sum $13,590 was in fact applied by appellant to his own use and benefit. In addition, the 1950 return reflected an expenditure by the Association in the amount of $18,000 for new construction. Of this sum $8,000 was for the personal benefit of appellant. (Tr. 10,165-10,167.)
>
> "The return for 1952 (Ex. 51) reflects an expenditure by the Association of $54,838 for building payments, alterations and improvements. This entire sum was applied by appellant to his personal use and benefit. It was also reported in the return for 1952 that the Building Association had expended the sum of $15,084 for building equip-

ment, supplies, services and repairs. Of this sum $1,368 was paid to a plumbing firm for work done for appellant personally. (Tr. 10,167-10,171.)" Appellee's Brief, pp. 84-85.

Once the falseness of the returns are established (and appellant fails to attack their falseness), there exists but one ground for reversal on these counts (which appellant urges), to wit, that there is in the evidence no more than a remote suspicion that appellant knew such returns existed.

We read the record otherwise. Beck had himself signed such Form 990 returns in 1942 and 1945. Beck also signed yearly Form 990 returns for the Western Conference Pension Trust Fund, of which he was trustee. McDonald *usually* signed the Joint Council 990 forms. Copies of each were then placed in the corporate files.

The 1945 Building Association Form 990 (Ex. 45), *signed by Beck*, was false with respect to payments to Lindsey. Payments to him amounting to $5,250 were made by the Building Association, but were for work done by Lindsey on behalf of Beck personally.

We note that on this issue as to the detailed knowledge of the operation of the union and its affiliates and its complete one-man control by Beck, appellant blows both hot and cold on the issue of Beck's knowledge of what was in the 990 forms there exists, say his counsel, only suspicion that he knew their content. We compare that with the admitted and self-professed single-man control of "the union organizations" by appellant—the lack of *any knowledge* in the governing boards of the corporations—the complete "direction" and "control" by Beck—his "possession" of all moneys and bank accounts—his lack of accountability to anyone for what he did or did not do—financially or otherwise. (See note 6, supra.)

We cannot agree that there existed merely a suspicion of appellant's knowledge as to the returns or that he did not have full knowledge of them and of their content. Nor can we agree that "the circumstantial evidence leads as rationally to a conclusion of innocence as to one of guilt." There was ample evidence to go to the jury on the two "990 counts" and to permit the jury to return a verdict of guilty. This it did. Its finding we will not disturb. We affirm appellant's conviction as to these two counts.

VII

The alleged error in admitting evidence concerning the loss or destruction of certain financial records of the union, and the instructions with regard thereto.

[12] The appellant was willing to and did, stipulate at the trial that *all* records of the union entities and of Beck, which might aid the government in reconstruction of Beck's financial dealings in the years in question, were destroyed. The trial judge allowed the government to introduce evidence of this destruction over objection by Beck. Beck now contends that in view of the stipulation mentioned, the only purpose served by this evidence was to prejudice Beck in the eyes of the jury. The government introduced the evidence purportedly to lay the foundation for the use of the net worth method. The government points out that the proof necessary to such a foundation is a matter of the discretion of the trial judge, and that abuse of that discretion is not here shown.

[13, 14] Beck complains of the instruction given in relation to the destruction of the records, in view of what he calls a complete lack of direct evidence to connect him with the destruction. Beck's complaint addressed to the language contained in instruction No. 19 does not produce conviction.[9] It relies on an emphasis supplied by the appellant, to have any relevance whatever. It is favorable to appellant in its only mention of him. The judge instructed the jury that the fact of destruction, standing alone, had no significance, and appellant complains of undue emphasis allegedly placed on the "standing alone" portion, and asks this court to assume that the jury drew a negative inference from the asserted emphasis. This we will not do. Instructions must be considered as a whole. The jury was properly instructed (Stoneking v. United States, 8 Cir. 1956, 232 F.2d 385, 389), and we must assume it followed

9. "Evidence has been received during the trial concerning the loss or destruction of certain records of several persons or organizations, including the Western Conference of Teamsters, Joint Council Building Association, and records of certain banks. Such evidence was permitted for the purpose of laying the basis for the presentation of certain matters by oral testimony, and as a basis for allowing the use of the net worth method, which I will explain to you later. Therefore, you are instructed that the loss or destruction of any such records, in and of itself—that is, standing alone, shall not be considered as a fact adverse to the defendant." (Instruction 19, R. 714.)

such instructions without confusion (United States v. Davis, 7 Cir. 1960, 281 F.2d 93, 100).

VIII

Was there error in admitting evidence of appellant's refusal to turn over his records to, or discuss his taxes with, the Internal Revenue Service agents, and in instructing the jury with respect thereto?

[15, 16] First, we must say we agree with the government that appellant has failed to comply with Rule 18(2) (d) of this court, 28 U.S.C. That rule requires the full substance of the evidence on the subject to be fairly stated. Such evidence is not fairly or fully stated when appellant merely charges "Such testimony [relating to appellant's refusal to turn over his records to the Internal Revenue Service agents] was permitted in far greater degree than necessary for the purpose of laying a foundation for appellee's use of the net worth method." It is fundamental that *some* foundation along such lines was required before the government could proceed under its theory of the case. The amount of foundation is always largely a matter of judicial discretion in the trial court. Beard v. United States, 4 Cir., 1955, 222 F.2d 84, cert. denied, 350 U.S. 846, 76 S.Ct. 100 L.Ed. 753. That discretion was not here abused, either in permitting the evidence to go in, or in refusing the appellant's requested instruction No. 20 with respect to it.[10]

Therefore, while it would be perfectly proper for us to disregard such alleged error because improperly raised, we prefer to consider the question properly raised, and hold there was no error in either of the court's rulings, i. e., either as to its admission or as to the instructions given concerning it.

In summary, the conviction of appellant on the two "990" counts (26 U.S.C. § 3793 (b) (1) are *affirmed;* the conviction of appellant on the four counts of income tax evasion are reversed and set aside, and such four counts are remanded for a retrial in the district court.

10. When the court declined to give this instruction as an incorrect statement of the law, then counsel for appellant conceded that the instruction, as requested, was not a correct statement of the law. (Tr 10,642-10,644.)